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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,450	09/14/2000	Gunter Linde	MO-5884/LEA-	1560

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BAYER CORPORATION
PATENT DEPARTMENT
100 BAYER ROAD
PITTSBURGH, PA 15205

EXAMINER

BOS, STEVEN J

ART UNIT	PAPER NUMBER
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1754

8

DATE MAILED: 03/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/646,450

Applicant(s)
Linde et al

Examiner
Steven Bos

Art Unit
1754



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 14, 2000
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-34 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4,7 20) ☐ Other: _____

Art Unit: 1754

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: instant claim 20 does not have proper antecedent basis in the specification.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 20-34 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claim 21, "quotient of density and bulk density between 3.0 and 10" is new matter. It appears that --quotient of pycnometric density and bulk density is between 3.0 and 10-- was intended, see instant pp. 3 and 4.

In claim 22, "based on the weight of the pellets" is new matter.

Art Unit: 1754

In claim 25, "quotient of density and bulk density between 3.0 and 10" is new matter. It appears that --quotient of pycnometric density and bulk density is between 3.0 and 10-- was intended, see instant pp. 3 and 4.

In claim 30, "based on the weight of the pellet" is new matter.

In claim 34, "to the wax, polyether, polyolefin or polyvinyl alcohol" is new matter.

Claims 20-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 20, "having a relative color intensity" is indefinite as to what the pellets have the color intensity in, ie. is it in cement, paint, plastic or something else?

In claim 20, "based on the uncompacted powder" is indefinite as to what this uncompacted powder is, ie. uncompacted powder of what.

In claim 20, "the uncompacted powder" lacks proper antecedent basis in the claim(s).

In claim 20, "having a color intensity ... of greater than 100%" is indefinite as to how anything could have an intensity of greater than 100% since 100% is the maximum intensity possible.

In claim 21, "a quotient of density and bulk density between 3.0 and 10" is indefinite as whether the recited values are for each of the "quotient of density" and "bulk density" or for their combination.

Art Unit: 1754

In claim 25, "it" is indefinite as to what "it" refers to.

In claim 25, "a quotient of density and bulk density between 3.0 and 10" is indefinite as whether the recited values are for each of the "quotient of density" and "bulk density" or for their combination.

In claim 27, "each compaction stage" lacks proper antecedent basis in the claim(s).

The term "thin layer" in claim 33 is a relative term which renders the claim indefinite. The term "thin layer" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linde '988 or EP 802241.

Linde and EP '241 each teaches or at least suggests the instantly claimed process which would appear to also produce the instantly claimed product (see cols. 4,5,8,9 and the claims of Linde). The taught briquette is the same as the instantly claimed pellet.

Art Unit: 1754

The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to have selected the overlapping portion of the range disclosed by the reference because overlapping ranges have been held to be a prima facie case of obviousness, In re Malagari, 182 USPQ 549.

Where the examiner has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicant to establish that their product is patentably distinct, see In re Best, 195 USPQ 430.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Bos whose telephone number is (703) 308-2537. The examiner is on the increased flexitime program schedule. The FAX No. for After Final amendments is 703-872-9311; for all others it is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read 'Stw Bos', is positioned above the printed name and title of the examiner.

Steven Bos
Primary Examiner
Art Unit 1754